

REMARKS

1. Introduction.

This amendment is submitted in response to the Official Action mailed 05/09/2006. Claims 1 - 24 (among which claims 1 and 10 are independent) are pending. Claims 1 - 9 stand withdrawn from further consideration by the Examiner as being drawn to a non-elected invention. Claims 10 - 24 stand rejected. Applicant respectfully traverses the rejections for the reasons detailed below and requests reconsideration. Claims 10, 13, 17 - 20, and 22 are currently amended. Claims 1 - 9, and 15 are canceled. No new claims are added at this time.

Filed as part of this response are Applicant's amended drawing figures and Applicant's Information Disclosure Statement.

Filed as part of this response is Applicant's petition for a one-month extension of time together with the required fee as required under 37 C.F.R. §§ 1.17(a)(1) and 1.136(a).

2. Election/Restrictions.

In response to the Office Action mailed 05/09/2006, Applicant respectfully withdraws traverse as to the Restriction Requirement, in so far as it delineates between Groups I and II. Applicant agrees that the Examiner has established a prima facie case for restricting the claims of this application.

Therefore, it is respectfully submitted that the subject matter of Group II should be examined in this application, and

the subject matter of Group I be divided out into another application under separate filing as allowed under 35 U.S.C. §121. In order that this response be considered complete, Applicant elects the subject matter of Group II, which encompasses claims 10 - 24, without traverse. Applicant has canceled claims 1 - 9.

3. Information Disclosure Statement.

Applicant notes the Examiner's position under 37 C.F.R. §1.98(b) and MPEP §609.04(a) with regard to a separate paper for Applicant's disclosed prior art. Accordingly, filed with this paper is Form PTO/SB/08A with Applicant's cited references, and the fee required under 37 C.F.R. §1.17(p).

4. Drawings.

The Examiner has objected to the drawings as failing to comply with 37 C.F.R. §1.84(m) because of improper shading which does not aid in the understanding of the invention and which will not reproduce properly. Corrected drawing sheets believed to be in compliance with 37 C.F.R. §1.84(m) and believed to overcome the Examiner's objections are submitted with this response.

5. Section 112, second paragraph.

Claims 13 - 19 have been rejected as being indefinite based upon the limitation "obtain the consumer's zip code distance from the dealer." These rejections are believed to be obviated by the present amendment to claim 13. Because claims 14, and 16 - 19

depend from claim 13, the Examiner's prior rejections of the same are traversed.

Claims 13 - 22 have been rejected as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant claims as the invention. Applicant has amended claims 13, 17 - 20 and 22 to remove the term "may." Applicant's amended claims are believe to be definite as required by Section 112. Because claims 16 and 21 depend from the amended claims, the Examiner's prior rejections of the same are traversed.

6. Section 102.

Claims 10 - 14, 16 - 18, 20 and 24 were rejected under Section 102(b) as being anticipated by Ghouri et al., U.S Patent Publication No. 2002/0082978 A1 (hereinafter "Ghouri"). Applicant respectfully traverses the rejections and requests reconsideration for the following reasons.

The Examiner admits Ghouri does not disclose participating dealers agreeing to a bidding agreement. This feature is clarified by amendment to claim 10 which now reads in pertinent part:

"c) <u>providing a bidding agreement to each participating dealer;</u> "
--

This distinction clearly distinguishes over Ghouri with regard to

claims 10 - 14, 16 - 18, 20 and 24. For at least this reason, Ghouri does not anticipate any of claims 10 - 14, 16 - 18, 20 or 24. This ground for rejection should be withdrawn.

7. Section 103(a).

Claims 15, 19, 21 - 23 were rejected under Section 103(a) as being unpatentable under Ghouri, in view of: 1) Holden et al., U.S Patent Publication No. 2001/0032175 A1 (hereinafter "Holden") [claims 15 and 19]; 2) Freeland, U.S Patent Publication No. 2002/0169640 A1 (hereinafter "Freeland") [claim 21]; 3) Chaves et al., U.S Patent Publication No. 2002/0042752 A1 (hereinafter "Chaves") [claim 22]; and 4) Gologorsky et al., U.S Patent Publication No. 2004/0186805 A1 (hereinafter "Gologorsky") [claim 23].

In response to the Examiner's rejection of Claims 15, 19, 21 - 23 under 35 U.S.C. 103(a) as set forth above, Applicant respectfully points out that the prior art patents cited by the Examiner, when applied to the claim language of the present application in each of the claims rejected under 35 U.S.C. 103(a), do not suggest, or show motivation for, the combination or modification of the present invention. More specifically:

1. Regarding claim 19, the Examiner notes Ghouri does not disclose a participating dealer bidding agreement. Though Holden does include a bidding agreement - it requires buyers or customers to "accept a 'Bidder Agreement'" [Holden,

paragraph 0051] which teaches away from the present invention where dealers not customers agree to the bidding agreement [Specification page 6, lines 23 - 26]. Regarding claim 21, the Freeland reference teaches away from the present invention in that it is directed towards facilitating transfer of titled properties including use of escrow services [Freedland, paragraph 0003], whereas the present invention teaches a complete different methodology, i.e., providing a pool, of invited price quotations over a set period of time in response to a consumer's tailored specifications [Specification page 4, lines 12 - 23]. Regarding claim 22, Chaves teaches away from the present invention in that it is directed towards used automobile trade-in commerce bids by consumers [Chaves, paragraph 0001] while the present invention teaches a complete different methodology, i.e., providing a pool, of invited price quotations over a set period of time in response to a consumer's tailored specifications for a new automobile [Specification page 4, lines 12 - 23]. Finally, as to claim 23, Gologorsky considers a range of acceptable bids for parsing into whole dollar amounts [Gologorsky, paragraph 0165] while the present method does not impose any range limits but deviates from a set point, i.e., the MSRP [Specification, page 6, lines 9 - 24]. *Lewmar Marine, Inc. v. Barient, Inc.*, 3 U.S.P.Q. 2d 1766, 1768 (Fed. Cir. 1987).

2. Further, Claims 19, 21 - 23 are believed allowable because the references may not be combined in the manner attempted for the reason that it is not permissible to use the claims as a framework from which to pick and choose among individual references to recreate the claimed invention. *In re Fine*, 5 U.S.P.Q. 2d 1596, 1599 (Fed. Cir. 1988); *In re Beasley*, No. 04-1225, 117 Fed. Appx. 739, 743 - 745 (Fed. Cir. 2004).

3. Claims 19, 21 - 23 also are believed allowable because the references may not be combined in the manner attempted for the reason that the fact that a prior art structure could be modified to produce the claimed invention does not make the modification obvious unless the prior art suggests the desirability of, or motivation for, the modification. *In re Fritch*, 23 U.S.P.Q. 2d 1780, 1783 (Fed. Cir. 1992). There are no teachings, motivations, suggestions, or incentives in the prior art references to modify or to combine the prior art in the manner suggested by the Examiner. None of the references cited by the Examiner teach or otherwise suggest applying any of their respective disclosed or claimed features to the omnibus method as described and claimed in the present invention.

CONCLUSION

With the filing of this response, the application and all

claims should be in condition for allowance. Reconsideration of the bases of rejection, withdrawal of the same, and notification of allowance of this application is respectfully solicited.

For all the reasons advanced above, Applicant respectfully submits that the application is in condition for allowance and that action is earnestly solicited.

Dated: August 29, 2006.

Respectfully submitted,
/Charles L. Thoeming
Charles L. Thoeming
Customer No. 27015
Registration No. 43,951

BIELEN, LAMPE & THOEMING, P.A.
1390 Willow Pass Road
Suite 1020
Concord, CA 94520
(925)288.9720
(925)288.9731 Facsimile

Enclosures - Corrected Drawing Sheets (12 sheets)
Information Disclosure Statement (1 page)
Petition for Extension of Time (1 page)

Certificate of Filing by EFS-Web

I hereby certify that this correspondence and all related papers are being filed with the United States Patent and Trademark Office by the Patent Application and Document Submission System entitled EFS-Web under a transmittal sheet addressed to: Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450, on August 29, 2006.

/Charles L. Thoeming/
Charles L. Thoeming, Registered
Representative of Applicant
August 29, 2006
Date of Signature

cc: Client